

REMARKS

As of this amendment claims 1-40 are subject to a restriction requirement. In particular, the claims are alleged recite five distinct inventions, i.e., Groups I-V. By this amendment, applicant adds two additional claims, i.e., claims 41 and 42, dependent from claim 1 of Group I (claims 1-23, 39 and 40).

New claims 41 and 42 are directed to a mems transducer comprising a circuit board, a cover and a transducer unit. The circuit board includes a recess or pocket cooperating with the transducer unit to form a back volume. Because the subject matter of new claims 41 and 42 are directed to the mems transducer of Group I, applicant submits that no new matter has been added, and the new claims are properly considered along with the original claims 1-23, 39 and 40 of Group I.

I. PROVISIONAL ELECTION REQUIRED UNDER 37 C.F.R. §1.143

An election is required in this response. Accordingly, applicant elects, with traverse, Claims 1-23 and 39-40, and requests that the remaining claims 24-38, be withdrawn without prejudice.

II. TRAVERSE OF RESTRICTION REQUIREMENT

The applicant respectfully traverses the restriction requirement with respect to claims 1-42. Pursuant to MPEP §803, a restriction requirement is proper only if: (1) the inventions are independent or distinct as claimed, and (2) there would be a serious burden on the examiner if the restriction is not required. Without addressing the issue of whether the claimed mems transducer and method of making a mems transducer are patentably distinct from each other, the applicant respectfully submits that a search and

examination of the complete set of claims would not impose a serious burden on the examiner. The applicant submits that examination of a set of claims directed to both the structure of the mems transducer and the method of making the same would not place a serious burden upon the examiner if restriction is not required.

MPEP §802.01 states that the distinctness required for restriction means that the subjects "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER" (emphasis with capital letters in original). (See also MPEP §808.02, which states that where "related inventions are not patentably distinct as claimed, restriction ... is never proper." The Patent Office has also stated that "it is imperative the requirement should never be made where related inventions as claimed are not distinct." MPEP §806.)

These positions are necessary to entry of the restriction requirement by the Office and may be relied upon by the applicant during examination of this and continuing applications, unless the restriction requirement is withdrawn. If the examiner is not taking these positions, then it is submitted that the restriction requirement should be withdrawn upon reconsideration.

III. CONCLUSION

For these foregoing reasons, applicant respectfully requests an action on the merits of all the claims and a Notice of Allowance thereof. If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855 (30521/491A). Reconsideration and withdrawal of the restriction requirement is therefore respectfully requested.

Respectfully submitted for,

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